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Norman Understein

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NIXON & VANDERHYE, PC

901 NORTH GLEBE ROAD, 11TH FLOOR

ARLINGTON, VA 22203

EXAMINER

GREENE, DANIEL LAWSON

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte NORMAN UNDERSTEIN

Appeal 2009-013863
Application 09/617,065
Technology Center 3600

Before MURRIEL E. CRAWFORD, JOSEPH A. FISCHETTI, and
KEVIN F. TURNER, *Administrative Patent Judges*.

TURNER, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF CASE

Appellant seeks our review under 35 U.S.C. § 134 of the Final Rejection of claims 1-9. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF THE DECISION

We AFFIRM.²

THE INVENTION

Appellant's claimed invention relates to a system and method for qualifying a participant over a network for an auction or other e-commerce transaction to reduce or eliminate Internet commerce fraud. (Abs.)

Independent claim 1, which is deemed to be representative, reads as follows:

1. A method of qualifying a participant over a global network in a transaction requiring a transfer of funds from the participant using a qualifying system, the method comprising:

(a) the participant establishing a consumer funding account by depositing funds in the consumer funding account, the consumer funding account to be administered by the qualifying system;

(b) the participant entering a transaction requiring a transfer of funds from the participant to a vendor;

(c) the qualifying system reserving a portion of the consumer funding account according to a transaction parameter determined by at least one of the qualifying system, the participant or the vendor; and

² Our decision will make reference to the Appellant's Appeal Brief ("App. Br.," filed Jan. 7, 2008) and Reply Brief ("Reply Br.," filed Jun. 4, 2008), and the Examiner's Answer ("Ans.," mailed Apr. 4, 2008).

(d) the qualifying system qualifying the participant for the transaction if the consumer funding account satisfies conditions of the transaction parameter.

THE REJECTION

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Walker et al. (Walker '207)	5,794,207	Aug. 11, 1998
Walker et al. (Walker '396)	6,240,396 B1	May. 29, 2001

The Examiner rejected claims 1-9 under 35 U.S.C. § 102(b) as being anticipated by Walker '207. Additionally, the Examiner rejected claims 1-9 under 35 U.S.C. § 102(b) as being anticipated by Walker '396.

ISSUE

Appellant generally argues that “Walker ['207] does not disclose the use of an account administered by its system, nor does Walker disclose a system wherein funds are reserved in an account administered by its system according to a transaction parameter to qualify a participant in a transaction,” as generally recited by independent claims 1, 4, and 7-9 (App. Br. 16; *see also* Reply Br. 2-3.) Additionally, Appellant argues that Walker '207 fails to disclose reserving first and second parts of a consumer account, as generally claimed by independent claim 4. (App. Br. 17-18; *see also* Reply Br. 3-4.) Lastly, Appellant makes similar arguments with respect to the additional rejection of claims 1-9 as anticipated by Walker '396. (App. Br. 19-20.)

In response, the Examiner finds that Walker '207 clearly anticipates the subject matter of claims 1-9. (Ans. 3-6.) Additionally, the Examiner

finds that Walker '396³, which incorporates the disclosure of the Walker '207 patent, also clearly anticipates the limitations recited by claims 1-9.

(Ans. 7.)

Only those arguments actually made by Appellant have been considered in this decision. Arguments which Appellant could have made but chose not to make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Thus, the issue arising from the respective positions of Appellant and the Examiner is:

Did the Examiner err in rejecting claims 1-9 under 35 U.S.C. § 102(b) as anticipated by Walker '207?

FINDINGS OF FACT

The record supports the following findings of fact (FF) by at least a preponderance of the evidence. *In re Caveney*, 761 F.2d 671, 674 (Fed. Cir. 1985) (explaining the general evidentiary standard for proceedings before the Office).

Claim Interpretation

1. Appellant has not directed us to a lexicographic definition of the term ‘administered’ in their disclosure.

2. Appellant’s Specification describes that “[a] balance in the bidder funding account can be an amount of unreserved funds deposited in the bidder funding account and/or an amount of unreserved credit in the bidder

³ Since, Walker '396 incorporates the disclosure of Walker '207 by reference, we need not reach a separate conclusion with respect to this rejection. Instead, our analysis of Walker '207 is dispositive for both references.

funding account according to an approved line of credit provided to the user.” (Spec. 12, ll. 5-8.)

3. Additionally, Appellant’s Specification describes that “portions of a credit line are reserved via an ‘authorization hold,’ which is enabled according to known credit card-type issuers and processors . . . [t]he authorization hold serves to reserve a portion of the credit line. When the bidder is no longer the high bidder, the authorization hold is released.” (Spec. 12, ll. 8-16.)

4. Further, Appellant’s Specification describes that

The line of credit function can be effected via a bank card issuing company that currently provides credit such as through the Internet or by the system source. The system, through a link with the bank card issuing company, can determine if the credit line is sufficient to place an authorization hold on the line of credit and to reverse the authorization hold when the line of credit is not needed.

(Spec. 12, ll. 19-24.)

5. Additionally, Appellant’s Specification describes that “[i]f the bidder wins the auction, the funds can be transferred through the bank card issuing company and charged to the bidder according to a user agreement or according to another preset billing procedure.” (Spec. 13, ll. 18-21.)

Walker '207

6. Walker '207 is directed to method and system for prospective buyers of goods or services to communicate a binding purchase offer globally to potential sellers. (Col. 8, ll. 28-34.)

7. Walker '207 describes that a potential buyer makes a conditional purchase offer (CPO) after a determination has been made as to whether their account contains sufficient available credit. (Col. 17, ll. 27-30.)

8. Walker '207 describes that a buyer wishing to make a purchase accesses the central controller located at a remote server and registers for the service. The central controller is divided into three components, embodied as three separate servers: an operations server, a trusted server, and bonding agency. The bonding agency verifies user's ability to pay or deliver goods. (Col. 10, ll. 8-14.)

9. Walker '207 describes that when a CPO 100 is received, central controller 200 extracts price and expiration date information from CPO 100 and payment processor 230 submits a pre-authorization of the price of CPO 100 to the credit card clearinghouse which serves to "lock up" a portion of the available credit on the buyer's credit card, thus indicating whether sufficient credit is available. (Col. 17, ll. 26-40; *see also* Fig. 6.)

10. In describing "Payment Preferences," Walker '207 describes that:

[C]entral controller 200 establishes buyer account 297 which either stores money transferred by the buyer or serves as a pointer to an account of the buyer outside the system. For buyers using credit cards, for example, buyer account 297 contains the credit card number, expiration date, and name of issuing institution. Buyers could also transfer money to central controller 200 to be stored in buyer account 297, which would operate like a conventional checking account. Central controller 200 would send a check to the seller written on buyer account 297. Alternatively, central controller 200 could electronically move the funds directly from buyer account 297 to seller account 298. At step 1340, central

controller 200 contacts the bank or card issuer to confirm that funds are available.

(Col. 21, ll. 1-15.)

11. Figure 2 of Walker '207 depicts that payment processor 230 is part of central controller 200. (Fig. 2.)

12. Walker '207 describes a payment preference wherein the buyer makes a partial payment when CPO 100 is bound and then completes payment when the goods are received. (Col. 22, ll. 21-33.)

13. Walker '207 describes that buyer information is obtained when the buyer first registers with the system, or immediately prior to posting their first CPO 100. (Col. 13, ll. 5-8.)

Walker '396

14. Walker '396 is directed to a conditional purchase offer management system for event tickets where an individual searching for a ticket to a particular event may provide a guaranteed purchase offer to potential sellers. (Abs.)

15. Walker '396 is a related patent to Walker '207 and incorporates the subject matter of the Walker '207 patent therein. (Col. 1, ll. 7-16.)

PRINCIPLES OF LAW

Anticipation

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631 (Fed. Cir. 1987).

ANALYSIS

Claims 1-9 rejected under 35 U.S.C. § 102(b) as being anticipated by Walker '207.

Appellant generally argues that “Walker ['207] does not disclose the use of an account administered by its system, nor does Walker ['207] disclose a system wherein funds are reserved in an account administered by its system according to a transaction parameter to qualify a participant in a transaction,” as generally recited by independent claims 1, 4, and 7-9 (App. Br. 16; *see also* Reply Br. 2-3.) We are not persuaded by Appellant’s arguments and agree with the Examiner that Walker '207 discloses an account administered by its system that reserves a portion of an account according to a transaction parameter. (Ans. 8-9.)

Specifically, Walker '207 discloses a system which allows a registered potential buyer to make a conditional purchase offer (CPO) after a determination has been made as to whether the buyer’s account contains sufficient available credit (FF 6, 7, 8, 10), which we interpret to be a qualifying system. Additionally, Walker '207 describes that its system extracts price and expiration date information from a buyer’s CPO and then its payment processor submits a pre-authorization based on that extracted price to a credit card clearinghouse which serves to “lock up” a portion of the available credit on the buyer's credit card (FF 9, 4, 5), which we interpret to be equivalent to reserving a portion of the consumer funding account according to a transaction parameter, as claimed by Appellant.

In making this determination, we look to Appellant’s Specification which broadly describes that a ‘consumer funding account’ “can be an

amount of unreserved funds deposited in the bidder funding account and/or an amount of unreserved credit in the bidder funding account according to an approved line of credit provided to the user.” (FF 2.) Further, Appellant’s Specification describes that in order to reserve a portion of funds, “portions of a credit line are reserved via an ‘authorization hold . . . ’” (FF 3, 4.) Thus, contrary to Appellant’s contention regarding the differences between a deposit account and a credit line (Reply Br. 2), we find that Appellant’s Specification contemplates interoperability between either of these fund sources just as Walker '207 describes different payment preferences between credit cards and conventional checking accounts established, and controlled by the central controller 200 in Walker '207. (FF 10.)

With respect to Appellant’s argument that the account disclosed in Walker '207 is not ‘administered’ by Walker '207’s system, we cannot agree and find that Appellant’s have neither directed us to a lexicographic definition for the term ‘administered’ (FF 1), nor directed us to a portion of their Specification which would distinguish Appellant’s claim from the function provided by the central controller 200 disclosed in Walker '207. In fact, Appellant’s Specification describes that “[t]he system, through a link with the bank card issuing company, can determine if the credit line is sufficient to place an authorization hold on the line of credit and to reverse the authorization hold when the line of credit is not needed” (FF 4), which we interpret to be equivalent to Walker '207’s central control which serves as a pointer to a buyer’s account outside the system. (FF 10.) Therefore, we find that Walker '207 anticipates a system wherein funds are reserved in an

account administered by its system according to a transaction parameter to qualify a participant in a transaction,” as generally recited by independent claims 1, 4, and 7-9.

Additionally, Appellant argues that “[s]ince Walker ['207] lacks any teaching of reserving a portion of a consumer funding account, the transaction parameters referenced in dependent claims 2 and 3 are also lacking.” (App. Br. 17.) We are not persuaded by Appellant’s argument and as discussed *supra*, find that Walker '207 does indeed reserve a portion of a consumer funding account. (FF 9.) Specifically, Walker '207 reserves a portion of a consumer funding account when its payment processor submits a pre-authorization for a CPO to a credit card clearinghouse which “locks up” a portion of the available credit on the buyer's credit card (FF 9, 10, 11), effectively reserving a portion of a credit card in a manner commensurate with the Appellant’s claims and the scope of Appellant’s Specification. (FF 5.) Thus, contrary to Appellant’s contention that Walker '207 transfers funds rather than reserving them (App. Br. 17), we find a pre-authorization as disclosed in Walker '207 to be equivalent to reserving funds as presently claimed by Appellant. Accordingly, Walker '207 discloses the step of reserving a portion of a consumer funding account according to a transaction parameter, as generally claimed by dependent claims 2 and 3.

Further, Appellant argues that Walker '207 fails to disclose reserving first and second parts of a consumer account, as generally claimed by independent claim 4. (App. Br. 17-18; *see also* Reply Br. 3-4.) We are not persuaded by Appellant’s argument and as discussed *supra*, find that Walker '207 discloses reserving a portion of a consumer fund. (FF 9.) Additionally,

while the Examiner may not of explicitly addressed each limitation, we depend on Walker '207 for all that it reasonably teaches and find that Walker '207 discloses a payment preference which allows a buyer to make a partial payment when their CPO is bound and then complete payment when their goods are received. (FF 12.) As such, we find that Walker '207 reserves a first portion as a required deposit and a second portion required to complete the transaction, as required by Appellant's independent claim 4. Therefore, Walker '207 anticipates reserving first and second parts of a consumer account, as generally claimed by independent claim 4.

Additionally, Appellant argues that Walker '207 fails to disclose the step of releasing the reserved portion of the consumer funding account when the transaction is completed, as generally recited by dependent claim 5. (App. Br. 18.) We are not persuaded by Appellant's argument and find that Walker '207 releases the reserved portion of the consumer funding account when a transaction is complete. (FF 10.) Accordingly, we find that Walker '207 anticipates the step of releasing the reserved portion of the consumer funding account when the transaction is completed, as presently claimed.

Appellant additionally argues with reference to dependent claim 6 that Walker '207 uses a third-party to verify buyer and seller ability to pay. (App. Br. 18; *see also* Reply Br. 4.) We are not persuaded by Appellant's argument, and as discussed *supra*, we find that Walker '207 determines whether a buyer/seller's account contains sufficient available credit. (FF 7.) Specifically, bonding agency, a component of Walker '207's central controller verifies a user's ability to pay or deliver goods. (FF 8.) While certain payment schemes in Walker '207 may require its central controller to

contact a credit card clearinghouse, Walker '207 clearly discloses that its central controller can move funds directly from a buyer's account to a seller's account, thus central controller and not a third-party would be able to verify the amount of funds available in that account. (FF 10.) Accordingly, Walker '207 anticipates the subject matter of dependent claim 6.

Lastly, Appellant argues that “nowhere does Walker ['207] describe a consequence when a participant to a transaction has not established an account with the system,” as generally recited by independent claim 9. (App. Br. 19.) We are not persuaded by Appellant's argument and agree with the Examiner that Walker '207 “teaches allowing people to set up accounts that do not have one.” (Ans. 14.) Specifically, Walker '207 describes that if a buyer is not already registered with the system, the buyer must register immediately prior to posting their first CPO. (FF 13.) Thus, in order for a buyer to make a CPO, the buyer must first register with Walker '207's system. Therefore, Walker '207 anticipates “a consequence when a participant to a transaction has not established an account with the system,” as generally recited by independent claim 9.

Accordingly, for these reasons, and the reasons discussed *supra*, we sustain the Examiner's rejection of claims 1-9 rejected under 35 U.S.C. § 102(b) as being anticipated by Walker '207.

Claims 1-9 rejected under 35 U.S.C. § 102(b) as being anticipated by Walker '396.

Appellant makes similar arguments with respect to the Examiner's additional rejection of the same claims 1-9 as anticipated by Walker '396.

Walker '396 is a continuation-in-part of the Walker '207 which incorporates the Walker '207 patent by reference. (FF 15.) Accordingly, since we have sustained the Examiner's rejection of claims 1-9 as anticipated by Walker '207, *supra*, we reach a similar conclusion with respect to Walker '396.

CONCLUSION OF LAW

We conclude that the Examiner did not err in rejecting claims 1-9 under 35 U.S.C. § 102(b) as anticipated by Walker '207 and with respect to Walker '396.

DECISION

The decision of the Examiner to reject claims 1-9 is AFFIRMED.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv)(2007).

AFFIRMED

ack

cc:

NIXON & VANDERHYE, P.C.
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON, VA 22203